

MAY 12 2006

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT: BONNSTETTER, Bill J., et al.
SERIAL NO: 09/760,145
FILED: January 12, 2001
TITLE: NETWORK BASED DOCUMENT DISTRIBUTION METHOD

Art Unit: 2152
Examiner: MOORTHY, Aravind K.
Confirmation No: 2367
Docket No: P04361US01

REMARKS ACCOMPANYING RULE 181 PETITION

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

This is a request under the provisions of 37 CFR 1.181(3) to invoke the Director's supervisory authority to order entry of an earlier filed Rule 131 Declaration into the record.

Applicant is a small entity under 37 CFR 1.9 and 1.27 and the fee for such petition is enclosed. Any deficiency or overpayment should be charged or credited to Deposit Account 26-0084.

CERTIFICATE OF MAILING/TRANSMISSION (37 CFR 1.8(a))

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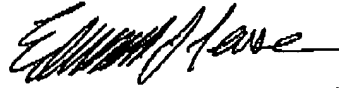
May 12, 2006

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☒ transmitted by facsimile to the Patent and Trademark Office, Art Unit 2152
at Fax No. (571) 273-8300.


EDMUND J. SEASE

Respectfully submitted,



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RULE 181 PETITION TO THE DIRECTOR

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

I, Edmund J. Sease being sworn, depose and state the following:

1. I am the attorney having responsibility for prosecution of the above-identified case. I file this petition to invoke the supervisory authority of the Director § 1.181(3).
2. I am familiar with the prosecution of this case and have either done it myself or worked with Bart A. Fisher, an associate in our firm who has from time to time been assigned by me to assist in the prosecution of this case.
3. The Examiner entered a final rejection on January 12, 2006, which for the first time ever in the prosecution of the case cited a new reference, Dirksen, U.S. Patent No. 6,853,975 (Dirksen '975).
4. Previous to the final rejection, Dirksen '975 had never been cited in the prosecution of this case.

5. In response to the citation of Dirksen '975 in an Amendment After Final Rejection dated April 12, 2006, we filed a Rule 131 Declaration of the Inventor, Bill Bonnstetter. In the accompanying remarks with that Rule 131 Declaration we pointed out that in the amendment after final as filed was the first time we seasonably had an opportunity to swear behind Dirksen '975 because Dirksen '975 had never been cited by the Examiner, prior to the final rejection.

6. In an Advisory Action dated April 29, 2006 stamped by Christopher Revak, but in fact handled by Examiner Aravind Moorthy, the Examiner refused entry of the Affidavit for failure to show good and sufficient cause why the Affidavit was not earlier presented, citing 37 C.F.R. § 1.116(e).

7. Upon receipt of the Amendment After Final Rejection I called Examiner Moorthy on May 10, 2006, explaining to him that the Rule 131 was seasonably filed, as it could not have been filed earlier since Dirksen '975 had not been cited earlier. The Examiner then went on to explain that in the accompanying remarks he said that in fact the Affidavit "has been considered". I said this was inconsistent with the checking of the box 8 indicating that it "will not be entered". I further pointed out to him that the Amendment After Final Rejection made no amendments to the claims, simply added remarks saying that Dirksen '975 was an ineffective reference under § 102(a) and that it was not a § 102(b) reference since it was not one year before the critical date of the Applicant. The Examiner said he could not recall why he had done what he did, but that he would check and get back to me on the morning of May 11.

8. On May 11, the morning past and the Examiner did not call. I waited until 1:05 p.m. Central Daylight Time, called the Examiner again, got no answer and left a message which so far remains unanswered.

9. This Petition is deemed necessary in order to make it clear that the Rule 131 Declaration is in fact of record and may be used by the Applicant on the Appeal which is being simultaneously filed herewith on May 12, 2006.

10. The appropriate fee for filing this petition is enclosed.

11. I request that the Director order that the Rule 131 Declaration be declared as part of the record which may be relied upon by the Applicant in the Appeal record.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application, any patent issuing thereon, or any patent to which this verified statement is directed.

Dated:

May 12, 2006

By:

EDMUND J. SEASE

Edmund J. Sease